

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014020031

DECISION

Student filed his Due Process Hearing Request (complaint) with the Office of Administrative Hearings, State of California, on January 31, 2014, naming Burbank Unified School District (District). The matter was continued on February 27, 2014.

Administrative Law Judge Robert G. Martin heard this matter in Burbank, California, on May 19-23, 2014, and June 2, 9 and 11, 2014.

Valerie J. Gilpeer and Eric Menyuk, Attorneys at Law, represented Student. Student's father attended the hearing on May 19-23, 2014, and June 2, 2014. Student did not attend the hearing.

Melissa Hatch, Attorney at Law, represented District. District Director of Special Education Sunita Batra attended all days of the hearing.

The evidentiary portion of the hearing concluded on June 11, 2014. On that date, the matter was continued to June 27, 2014, for the parties to file written closing arguments. On June 27, 2014, upon receipt of the written closing arguments, the record was closed and the matter submitted.

ISSUE

Whether District denied Student a free appropriate public education (FAPE) during the period from March 1, 2013 to the filing of Student's due process hearing request by failing to offer Student placement at a residential treatment facility in order to address Student's unique needs.

SUMMARY OF DECISION

Student failed to demonstrate by a preponderance of the evidence that District's March 1, 2013 individualized education program (IEP) denied him a FAPE by offering Student placement in a non-public day school, with accommodations and behavioral support, instead of continued placement at a residential treatment center. In light of the requirement of the Individuals with Disabilities Education Act (IDEA) and the Education Code that students be educated in the least restrictive environment in which they can obtain an educational benefit, and evidence that Student's classroom behaviors could be addressed sufficiently in a non-residential setting for him to obtain an educational benefit, Student's evidence was insufficient to show that District's proposed placement and services were not reasonably calculated to provide Student with an educational benefit in the least restrictive environment.

FACTUAL FINDINGS

1. At the time of hearing, Student was 14 years old, and was residing and attending eighth grade at Forest Heights Lodge, a residential treatment center located in Colorado. Student was eligible for special education under the category of other health impairment based on a medical/psychological diagnosis of mood disorder, not otherwise specified. Parent resided within District's boundaries.

2. Parent adopted Student and Student's two brothers from foster care placements in February 2003, when Student was three years old, through the Los Angeles Department of Children and Family Services. Student was friendly and sweet, but would throw violent tantrums and did not respond to the usual calming techniques that were effective with his brothers. In 2004 to 2007, from pre-kindergarten through most of first grade, Student attended general education classes in private school. Despite counseling and medications, Student continued to have violent verbal outbursts daily at home, with occasional incidents of physical aggression. Student did not tantrum in school, but his performance was erratic and below grade level in all subjects, and he tended to tune out in class.

History of Residential Placement

3. In March, 2007, Student's aggressive behaviors at home escalated. Student threw violent tantrums and threatened to stab his brothers while they were sleeping. Parent and Student's brothers became afraid of Student.

4. Parent requested that Los Angeles Unified School District (LAUSD), the school district in which the family then lived, assess Student's eligibility for special education. LAUSD held an initial IEP on June 7, 2007. LAUSD's psychoeducational evaluation of Student's cognitive ability found him to be well-oriented to the classroom and school setting, with nonverbal ability, vocabulary, and auditory reasoning skills within the average range. However, Student had poor sequential recall of recent auditory and visual information, and below average visual perceptual skills and auditory comprehension. These

results suggested that Student had ADHD with significant distractibility that affected Student's academic performance. Socially and emotionally, Student showed an ability to participate appropriately in school activities, but his teacher was concerned that Student could not focus on his day-to-day work and concentrate to complete his work. Student presented a history of insecure feelings, expressed primarily at home. Student's teacher observed that Student did not tantrum at school. Academically, Student's lack of focus and distractibility impacted his progress in all subjects. LAUSD found Student eligible for special education under the category of other health impairment based on ADHD impacting his academic progress. For the 2007-2008 school year, LAUSD offered Student placement in a second-grade general education class in his school of residence, with academic goals in math, reading and written language, and a pre-vocational goal of remaining on task and asking for clarification when necessary. Student was offered supporting related services in a resource specialist program, with intensive small group or one-on-one instruction by a resource specialist teacher, and accommodations including preferential seating, pre-teaching and re-teaching of lessons as needed, and teacher checks of Student's understanding. LAUSD did not offer Student residential placement.

5. Also in March 2007, Parent contacted the Department of Children and Family Services' post-adoption services unit for assistance. The Department recommended that Student be placed in McKinley Childrens' Center (McKinley) a residential treatment facility in San Dimas, California, for boys aged 6 to 17. At the conclusion of first grade, in June 2007, Student was placed at McKinley. Student attended Canyon View School (Canyon View), a McKinley-run non-public school on the McKinley campus from June 2007 until March 2009. The Department placed Student at McKinley and funded Student's residential placement because of his aggressive behavior at home, and not for educational reasons.

6. On March 3, 2009, Parent moved Student from third grade at McKinley/Canyon View to residential placement at Five Acres School (Five Acres), a non-public school located in the Pasadena Unified School District, with 80 students in kindergarten through 10th grade. This placement was also made through, and funded by, the Department of Children and Family Services, and was not made by Student's IEP team for educational reasons. For Student's fifth grade 2010-2011 school year, Student's IEP offered continued placement in 100 percent specialized academic instruction at Five Acres, but did not offer residential placement, which continued to be provided by the Department of Children and Family Services for non-educational reasons.

7. Student made progress academically and behaviorally at Five Acres. A single serious behavioral involving Student at Five Acres occurred in March 2010, when Student, after school, put a belt around his neck and told residential staff that he wanted to kill himself. Staff persuaded Student to remove the belt and get some fresh air. When he returned to his cottage, Student was able to resume his normal routine without further incident.

8. In January 2011, Student transitioned from residential placement at Five Acres to attending Five Acres as a day school. Student received transition supports that included a

behavioral therapist who worked with Student in the home for four to five hours per day, three or four days per week. The Department of Children and Family Services stopped paying for Student's residential placement at Five Acres on January 13, 2011, and Parent enrolled Student in District on January 18, 2011. Student's transition home was successful with respect to his in-school performance. Student made significant progress in reading fluency and confidence, and met his objectives on his math and writing goals. In the first quarter of the 2010-2011 school year, prior to the transition home, Student received six As and five Bs in his academic subjects, and demonstrated satisfactory to excellent effort in those subjects, as well as satisfactory effort with respect to all of his social responsibilities such as working independently and cooperatively, accepting responsibility, relating well to peers and adults, exhibiting consideration and courtesy, and socializing at appropriate times. Student maintained substantially the same grades after his transition home. Student also made progress on his behavioral goals, and was able to resolve issues with his teacher and the classroom assistant. Two or three times per day, Student would become verbally aggressive with classmates when upset, but he could be verbally re-directed when this occurred. At Student's "transfer-in" IEP held by the District on March 2, 2011, Parent reported no concerns relevant to Student's educational progress, other than concern over what school Student would be attending for the 2011-2012 school year. District maintained Student's eligibility for special education under the category other health impaired based on ADHD, and agreed to offer continued placement at Five Acres until his annual IEP to be held in June 2011.

9. Student's transition out of residential placement was unsuccessful at home. On May 11, 2011, following a meltdown at home during which Student threatened to stab his brothers and Parent, Student was briefly admitted to Del Amo Hospital to evaluate his mood state, and self-injurious and threatening behavior. Based on a mental status examination of Student, the psychiatrist's diagnosis of Student's principal disorder was mood disorder, not otherwise specified, oppositional-defiant disorder, and disruptive disorder, not otherwise specified, with problem areas of mood disorder, self-destructive threatening behavior, and a child-parent relational problem.

10. Parent and the Department of Children and Family Services returned Student to residing at McKinley and attending Canyon View in July 2011. The change of school from Five Acres to Canyon View was not because Parent was dissatisfied with Five Acres, but because Five Acres had no residential spaces available. As with all of Student's prior residential placements, the placement was made through the Department of Children and Family Services in response to Student's behaviors at home, and not by Student's IEP team for educational reasons. Student remained at McKinley/Canyon View for his sixth grade (2011-2012) and seventh grade (2012-2013) years. During that time Student made progress on his academic and behavioral goals. Bonita Unified School District, where McKinley/Canyon View was located, continued Student's eligibility for special education and placement in a non-public day school. Bonita Unified School District did not offer residential placement, and as before, the residential placement was provided by the Department of Children and Family Services for non-educational reasons.

11. McKinley/Canyon View prepared incident reports describing significant behavioral incidents that took place at the school, or at the residence. Copies of the incident reports were sent to Parent. From his return to McKinley/Canyon View in July 2011 to the time of District's March 1, 2013 IEP, Student's behavior was noted in 12 incident reports from Canyon View and eight from McKinley. In summary, the incidents at Canyon View involved non-compliance, profanity, aggression, disrupting instruction and activities, leaving class without permission or refusing to return to class when required, fighting with students and punching a teacher. However, overall, daily "point sheets" used at Canyon View to document student classroom behavior showed that Student behaved positively in class most of the time. Student behaved better during some subjects than others.

12. The incidents at the McKinley residence between October 2011 and May 2012 were more violent and included threats and physical assaults on other residents and staff, self-injurious behavior, and destruction of property. For example, on one occasion Sheriffs were called and Student was arrested and put in a hospital on psychiatric hold. On another occasion Student left campus, walked down the middle of the street, refused to get out of the street or return to campus, and staff was required to use physical restraint to stop Student from hitting and scratching them and to return Student to campus. Placed in physical restraint on campus, he began banging his head on the floor and, when released, put a belt around his neck and threatened suicide, before finally calming down. The following day, Student expressed concern that he would repeat his behavior of the day before, and asked to be sent to a psychiatric hospital. A psychiatric mobile response team interviewed Student and arranged his admission to a hospital for psychiatric examination. Other incidents included pushing his cottage manager against a door, grabbing at his face, and punching the cottage manager's vehicle and then a road sign, causing Student to injure his hand and require three stitches; inappropriate sexual contact with another resident; and breaking a store window while off campus without authorization resulting in a police citation. After August 2012, Student had no incidents until January 2013, when, upset about being disciplined earlier in the day, Student ignored staff and left the campus at 4:45 p.m., returning at 6:15 p.m. Comparing the dates on the Canyon View and McKinley incident reports, Student's significant behavioral incidents at school did not follow (or precede) significant behavioral incidents at Student's residence.

2012-2013 School Year

13. Student had a single teacher for all subjects at Canyon View. Michael Mann was Student's teacher from July 2011 until Mr. Mann left Canyon View at the end of Student's seventh grade first quarter in October 2012. Mr. Mann's class was taken over by another teacher at Canyon View, Brian Grimm. For Student's October 19, 2012 Canyon View report card for the first quarter of the 2012-2013 school year, Mr. Mann gave Student A grades in PE and reading, Bs in science and art, and Cs math and writing. Student's behavior during each subject was reported using a scale of "outstanding," "satisfactory," and "needs improvement." Student's behavior was satisfactory in science, writing and art, but needed improvement in PE, reading and math.

14. From at least 2009, when Parent moved Student from McKinley and Canyon View to Five Acres, Parent was concerned that McKinley and Canyon View were environments that exposed Student to older, aggressive children, and that Canyon View was not adequately educating Student. For example, Parent observed in 2012 that Student lacked academic skills his older brother had possessed at Student's age, such as knowing simple times tables and how to count money. However, after Student returned to McKinley and Canyon View in 2011, Parent did not decide to change Student's placement until the Department of Children and Family Services stopped funding Student's residential placement. In October 2012, the Department of Children and Family Services notified Parent that Student's residential placement at McKinley was reaching the maximum 18 months of continuous residential placement they could provide, after which the Department would discontinue funding for Student's residential placement at McKinley in mid-December, 2012. The Department of Children and Family Services indicated that if Student returned home and problems arose again, Student would be eligible for a return to residential placement. Parent decided to pursue continued residential placement for Student instead of bringing Student home. Parent's reasoning was that bringing Student home from Five Acres in 2011 had failed despite Five Acres implementing what Parent at the time thought was "the best transition plan ever," and McKinley offered no transition plan. Based on Parent's experience in 2011, he believed that a "massive" transition plan would be required to successfully transition Student to life at home. Parent paid for Student's continued placement at McKinley/Canyon View after Department of Children and Family Services funding ceased in December 2012.

15. On November 30, 2012, Parent contacted Bonita Unified School District and requested that Student be assessed for eligibility for a residential placement at school district expense as an educationally-related mental health service.

District's February 28, 2013 Multi-Disciplinary Assessment

16. On January 29, 2013, Parent's attorney wrote District requesting an assessment plan including a full battery of assessments, including a mental health services assessment and residential placement assessment. District sent Parent's attorney a proposed assessment plan on January 30, 2013, and Parent, on February 4, 2013, approved a comprehensive assessment plan which, with revisions by Parent and District, included assessments in academic achievement, social and emotional development, motor ability, general ability, health and development, and for mental health services eligibility.

17. District psychologist Tamara Schiern coordinated District's multi-disciplinary assessment and prepared a February 28, 2013 report with assistance from special education teacher April Evans, who assessed Student's academic/pre-academic skills, and school nurse Lenora Aguilera, who screened Student's hearing and vision and reviewed his medical history and status.

18. As of the hearing, Ms. Schiern had worked as a school psychologist for 17 years, and had assessed 600 to 700 students with disabilities, including approximately 40

middle school students categorized as other health impaired with ADHD, plus other learning challenges, whose needs were similar to Student's.

19. In preparation for her assessment Ms. Schiern reviewed Student's psycho-educational assessment report prepared by Pasadena Unified School District for a June 3, 2010 triennial IEP for Student, noting its assessment of Student's social-emotional functioning to use as a baseline to compare to Student's current assessment results. Ms. Schiern also reviewed Student's educational records which included, in addition to the 2010 Pasadena assessment, Student's 2007, 2010, 2011 and 2012 IEP's, Student's report cards from Five Acres and Canyon View, Student's Canyon View daily classroom behavior point sheets, and the Incident Reports provided by Canyon View. Although District requested Student's records from Canyon View, District was unaware at the time that Canyon View did not include two of the incident reports, one of which involved punching a teacher, in its response to District's request. Canyon View/McKinley also did not provide any of the McKinley incident reports, and District was unaware of them.

20. Ms. Schiern's assessment also included classroom observation, standardized testing, and interviews with Student, Student's teacher Mr. Grimm, Canyon View counselor Kim Collette, McKinley Cottage Manager Michelle Mora, McKinley Cottage Counselor Chara Powell, and Student's guidance counselor.

21. Ms. Schiern observed Student in class on two separate days for one-half hour each day. Student was attentive to his work, did his work without prompts, and waited for help without complaint. Mr. Grimm reported that this performance and behavior was typical for Student. When Student went with Ms. Schiern to be tested on February 14, 2013, his mood was positive and he was eager to talk. He made good eye contact, had a good vocabulary, and expressed thoughts and feelings about his life and education that were appropriate for a 14 year old. For the second test session on February 21, 2013, Student arrived visibly upset because, he explained, his teacher had told him to stop running, which Student had, and then his teacher added unnecessarily that he would report Student's bad behavior to District. Student thought this was said to upset him. However, Student calmed down in five minutes and then demonstrated good attention and adequate effort on the tests.

22. Ms. Schiern administered the following standardized assessments: the Wechsler Abbreviated Scale of Intelligence II; the Wide Range Assessment of Memory and Learning 2, the Beery-Buktenica Developmental Test of Visual-Motor Integration; the Behavior Assessment System for Children 2; and the Conners 3 (a behavior inventory assessment for ADHD). To measure Student's cognitive functioning, Ms. Schiern used the Wechsler Abbreviated Scale instead of the more comprehensive Wechsler Intelligence Scale for Children-Fourth Edition because Student had been tested using the more comprehensive assessment twice in recent years (2007 and 2010) with consistent results, his cognitive ability was not in question, and Ms. Schiern wanted to focus her assessment on other areas of potential need. When the abbreviated scale yielded significantly lower scores than Student's prior two Wechsler Intelligence Scale for Children assessments, which were consistent with one another, Ms. Schiern concluded that the abbreviated scale had underestimated Student's

abilities. She observed that Student during testing had demonstrated good attention but gave up quickly when tasks became difficult. Also, she noted that Student answered questions in an impulsive manner that led to some lower scores on some items he might have been able to complete successfully if he had taken the time and put a little more thought into them. Because she believed that it underestimated Student's abilities, Ms. Schiern did not rely on the abbreviated scale in reaching her conclusions, and instead relied on Student's prior, full Wechsler Intelligence Scale for Children assessments. Using 10 subtests, Student's previous intelligence assessments gave separate estimates for verbal comprehension abilities, perceptual reasoning abilities, working memory abilities, processing speed abilities, and a composite of the four scores referred to as "full scale IQ." Student's standard scaled scores in 2010 Student were 96 in verbal comprehension, 88 in perceptual reasoning, 77 in working memory abilities, 88 in processing speed abilities and 82 full scale IQ, which placed Student in the 12th percentile of children his age.

23. Ms. Schiern administered the Wide Range Assessment of Memory and Learning to evaluate Student's immediate and delayed recall, and to differentiate between verbal, visual or more global memory deficits, because memory deficits are commonly associated with learning disabilities. This assessment instrument measures verbal memory, visual memory, and attention/concentration, which in turn yielded an overall general memory index. Student scored very low in these tests, resulting in an overall general memory index in the second percentile. Student was able to remember much better when the information was provided to him in a context, such as through a picture of people doing something (as opposed to abstract images), or in the form of a story (as opposed to a list of words).

24. Ms. Schiern tested Student's visual-motor integration skills using the test of Visual Motor Integration. Student was required to copy increasingly difficult geometric designs, to determine the degree to which his visual perception and finger and hand movements were coordinated. Student tested well below age-appropriate visual-motor integration ability.

25. To assess Student for possible emotional and behavioral disorders, Ms. Schiern used the Behavior Assessment System for Children 2. This test uses rating scales that ask how frequently (from "never" to "always") a student engages in various behaviors, with the scales to be completed by the student, student's teacher(s), and student's parents or custodial caregiver. Standard scores below 60 are rated "average," or typical. Scores from 60 to 69 are rated "at risk," indicating that challenges are emerging in a specific area. Scores above 69 are rated "clinically significant," indicating a concern where intervention is recommended. Ms. Schiern administered the Behavior Assessment rating scales to Student and his teacher, but not to Parent, because Student was not living at home, and Parent did not spend enough time with Student to give reliable responses. Ms. Schiern explained that she did not administer the behavior rating scales to any custodial caregiver of Student at McKinley because there was no evidence from her other assessments that Student might meet the eligibility criteria for emotional disturbance, so she did not feel that she needed additional information from a custodial caregiver concerning Student's behavior. Although this explanation was not fully persuasive, and Ms. Schiern appeared defensive while giving

it, her failure to give the assessment did not invalidate the overall results of District's evaluation because, as discussed below, Ms. Schiern also interviewed both McKinley Cottage Manager Michelle Mora and McKinley Cottage Counselor Chara Powell regarding Student's behaviors.

26. Student's self-ratings of his behavior on the Behavior Assessment System for Children 2 indicated that he did not view himself as having emotional or behavioral challenges and instead believed that other people and external events had created the challenges in his life. He did not appear to see his role in regulating his own behavior and emotions and his comments to Ms. Schiern indicated that he tended to view himself as a victim. Student's teacher rated Student to be in the at-risk range for hyperactivity, aggression, conduct problems, anxiety, depression, attention problems, learning problems and school problems, and in the clinically significant range for internalizing problems and somatization – the tendency to develop physical symptoms related to emotional challenges. However, the somatization score appeared to be related to Student's asthma, which lead to responses such as “almost always” complains of shortness of breath, “often” visits the school nurse, and “often” gets sick. High somatization and depression scores yielded a clinically significant composite score for internalizing problems, which Ms. Schiern found to be consistent with Student's diagnosis of mood disorder, not otherwise specified. For the school problems scales, Student's teacher rated Student at-risk for attention problems and learning problems. Student's teacher rated Student's adaptive (life functioning) scales as average in social skills, leadership, study skills and functional communication, and at-risk in adaptability.

27. Ms. Schiern used the Conners 3 to assess Student for ADHD and its most common associated problems and disorders. The Connors 3 uses student, parent and teacher rating scales based on questions answered by the student, parent, and teacher to provide the assessor information on: inattention, hyperactivity/impulsivity, learning problems, executive functioning, defiance/aggression, peer relations, family relations, executive functioning, conduct disorder and oppositional defiant disorder, and a global index of general psychopathology. Ms. Schiern gave Student the self-report scale and Student's teacher, Mr. Grimm, the teacher rating scale. Mr. Grimm did not return the teacher rating scale. Student's self-report generated no scales in the elevated range.

28. To measure Student's academic ability, Ms. Evans administered the Woodcock-Johnson III Normative Update Tests of Achievement (Special Education Teacher). Ms. Evans was unavailable to testify, and testimony concerning the Woodcock-Johnson was provided by Lisa Loscos. Ms. Loscos had trained Ms. Evans in administration of the Woodcock-Johnson and had discussed with Ms. Evans how she administered the test and chose the subtests given. Student's overall academic skills equated to grade level 3.8 and age equivalent nine years, two months. His broad reading standard score equated to grade level 4.8 and age-equivalent 10 years, two months, and broad math standard score equated to grade level 3.6 and age-equivalent nine years. Student's highest scores were in word attack in which he was able to break large words into syllables and sound out letter-words combinations at a 10th grade level, and basic reading skills (grade level 5.9). His

lowest scores were in math quantitative concepts (knowledge of mathematical concepts, symbols, and vocabulary) where he scored equivalent to a kindergarten grade level, and math reasoning, where he scored a grade level 1.8. Student's other scores on tests of reading and math fell between grade levels 3.1 to 4.8.

29. Ms. Aguilera, a registered nurse, prepared Student's health and developmental assessment report. Ms. Aguilera screened Student for hearing and vision at Canyon View and spoke with McKinley's licensed vocational nurse concerning Student's medications. Ms. Aguilera also spoke with Student's therapist concerning his medical diagnoses and behaviors. Student's hearing and vision were within normal limits. Student was taking two medications generally used to treat depression, and three generally used to treat allergies. Student's therapist told Ms. Aguilera that Student's behaviors were stable and manageable. She said that Student's primary medical diagnosis was mood disorder, not otherwise specified, with a secondary diagnosis of oppositional defiant disorder. This corresponded to the diagnosis given by the psychiatrist who admitted Student to Del Amo Hospital in May 2011.

30. In her interviews of Student and people familiar with Student, Ms. Schiern learned from Student that he did not like McKinley/Canyon View, and wanted to go home and attend public school. Student was afraid that he might not be able to do the work in public school because Canyon View had not taught him things he would need to know in public school. Student's teacher, Mr. Grimm, reported that Student was generally a good student who did his work and behaved appropriately, but that he was sometimes verbally defiant, and tended to shut down and not perform when he found work too difficult. Mr. Grimm said that Student used profanity two or three times per week but that his behavior had improved significantly and he had not had any major incidents recently.

31. Student's school counselor, Ms. Collette, told Ms. Schiern that Student would sometimes blow out, curse and be disrespectful when upset, but that this was happening less frequently than in the past. She noted that Student had a long history of ups and downs with respect to his behaviors. He had periods when he was trying hard and doing well with self-control and staying on task, but "eventually, he blows it. He proves it's a pattern." Ms. Collette observed that there were periods when Student seemed to lack the energy to hold himself together, and his classroom performance and cottage behavior would both slide. Student at the time was on a "public school contract," working on the things he needs to do to go to public school, but he was not consistently meeting his contract goals of doing a certain percentage of his academics every day, generating no incident reports, and getting a certain amount of class points every day. Ms. Collette felt that Student needed a non-public school setting because he continued to have therapeutic work to do, but she believed Student would eventually be ready to attend public school.

32. Student's residential counselor, Ms. Powell, told Ms. Schiern that Student had made great progress on his behavior in the cottage. He no longer became aggressive or threatened to assault others when upset or angry, and instead would do something passively aggressive, like singing inappropriate song lyrics. Ms. Powell explained that most of her

therapy with Student revolved around what Student would do and how he would behave once he got home, but it had been challenging to develop a home transition plan because Parent wouldn't participate in family therapy. Parent confirmed to Ms. Schiern that he was not participating in family therapy because in Parent's view, previous attempts at family therapy had ended in failure and disappointment. Ms. Powell told Ms. Schiern that Student exhibited "a lot of guilt and sadness" over being in residential placement.

33. Ms. Schiern also reviewed Canyon View's daily "point sheets" used to document student classroom behavior. These point sheets were filled out daily by Student's teacher or the classroom aide, and sent to Student's cottage staff to keep them informed. The point sheets divided the six hours of the school day into one-half hour increments, and awarded Student 0 to 5 points each half hour for positive behaviors of being on task, cooperating with peers, following teacher instructions, appropriate play, communicating in a respectful manner, and positive use of replacement behaviors. Points were subtracted for negative behaviors, and notes recorded the reason points were subtracted. A total of 60 points would be awarded on a day with no negative behaviors. In response to District's record request, Canyon View provided point sheets for 74 days between August 2012 to February 7, 2013. Student earned between 50 and 60 points on 92 percent of the days, and in fact earned a full 60 points on 54 percent of class days. He earned less than 50 points on 8 percent of the days. Student's point sheets indicated that he was on task and behaved positively in class most of the time.

34. Based on the above assessments, interviews and documents, Ms. Schiern and Ms. Evans concluded that Student's cognitive ability was probably in the low average range; Student was performing below grade level in all academic areas, with overall academic functioning at the fourth grade level or an age equivalent of 9.5; Student had a significant processing weakness in his visual-motor integration skills; and Student had weaknesses in verbal and visual memory, and would benefit from having information presented in context, for example, with stories and pictures. Socially, Student was able to develop and maintain friendships and generally get along well with peers and adults at school. He had difficulty resolving conflicts appropriately and a history of intermittent altercations with peers, which on occasion have escalated to physical altercations. Student had a very difficult time with limits and being told "no," and needed to work on accepting adult authority. He was very needy of adult attention.

35. Based upon Student's psychiatric diagnoses of mood disorder, not otherwise specified and oppositional defiant disorder, Ms. Schiern opined Student was potentially eligible for special education under the category of other health impairment. She believed Student was no longer eligible for special education under the category of other health impairment based on ADHD-like behaviors, because such behaviors were no longer affecting his educational performance. In her opinion, Student was not eligible for special education under the category of emotional disturbance because he did not meet the qualifying standard of exhibiting, over a long time and to a marked degree: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers or teachers; inappropriate types of

behavior or feelings under normal circumstances exhibited in several situations; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school. Nor was he eligible for special education under the category of specific learning disability because he did not exhibit a severe discrepancy between cognitive ability and academic achievement in the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, math calculations or math reasoning. She felt that Student would be eligible for mental health services at school, particularly related to his continued need to work on coping strategies and respecting authority. However, Student was able to progress in the general curriculum and on his goals with his existing level of counseling that was provided as a related service.

36. The report recommended referral to the IEP team for determination of continued eligibility for special education and related services, and if still determined by the IEP team to be eligible, development of an IEP, including a recommendation regarding placement and services; participation in a small-group learning environment with individualized academic support; continued use of a structured behavior support plan in the classroom; use of “priming” of material to be learned and pre-teaching concepts using familiar contexts; repetition of material, extended time to complete tasks, and material broken into smaller chunks; an occupational therapy assessment for fine-motor integration weakness.

March 1, 2013 IEP

37. On March 1, 2013, District convened Student’s IEP team to review the completed Multi- Disciplinary Assessment Report. Parent attended with advocate Bobbie Westil from the office of Student’s attorneys. District attendees were Special Education Director Sunita Batra, Ms. Schiern, Ms. Evans, and Ms. Aguilera (by phone), general education teacher Stefanie Enokia, and District’s attorney Adam Newman. Canyon View/McKinley attendees were Chief Program Officer Catherine Ols, teacher Brian Grimm, Cottage Manager Michelle Mora, special education counselor Kim Collette, and therapist Char Powell.

38. Parent stated that his concerns at the IEP were finding the right placement and supports for Student. Parent also requested that District’s report be amended to delete certain references concerning Student’s prior placements and Student’s relationship with his family, on grounds that they were unnecessary to determining Student’s needs. District agreed to consider Parent’s request and send Parent an amended report if changes were made.

39. The IEP team discussed Student’s eligibility. District members stated that Student did not meet the eligibility criteria for specific learning disability because he did not show a severe discrepancy between his cognitive ability and academic achievement, or meet the eligibility criteria for emotional disturbance because he did not have emotional or behavioral problems which were severe and to a marked degree, in terms of pervasiveness. District team members stated that Student would be eligible for special education as a student with an other health impairment due to his current medical diagnosis of mood disorder, not

otherwise specified, which adversely impacted his ability to progress in the general curriculum by making it difficult for Student to always utilize coping strategies and appropriate classroom behavior. Parent and Student's advocate did not agree with the failure to find Student eligible under specific learning disability and emotional disturbance, and believed that ADHD also should be a basis for Student's eligibility under the category of other health impairment. However, they did agree that Student was eligible under the category of other health impairment in general, and Parent accepted this eligibility for the purposes of developing Student's IEP.

40. The team reviewed and updated Student's present levels of performance based on the recent assessment and input from team members. Socially, Student typically got along well with others and on a daily basis and had a good rapport with his teacher. Emotionally, Student sometimes became upset when he was re-directed or given a direction he didn't like, and had difficulty accepting the consequences of his behavior and would become upset and blame others for his own actions. Behaviorally, Student was not consistently using coping strategies when he became upset and would instead use profanity towards peers and adults, and he would engage in attention-seeking behaviors such as horseplay or throwing things.

41. The team discussed Student's progress on his goals from his recent September 14, 2012 IEP, noting that he had made target progress of 70 percent on both his behavioral goal of using positive coping skills such as raising his hand to ask permission to speak with his teacher, asking to sit outside the classroom, or writing in his journal, to effectively resolve his frustrations in an appropriate manner, and on his social emotional goal of participating appropriately in a small group setting by remaining patient and allowing other students to express their thoughts and feelings without interrupting or engaging in attention seeking behaviors.

42. The team, including Parent, developed academic goals in the areas of reading, written language, math calculation and applied calculation. Student's vocational goal was to be to be able clarify any questions with the teacher, start the assignment, and work independently on the assigned task when presented with a challenging math or writing assignment. The team also addressed Student's behavior issues with a social/emotional goal that Student demonstrate appropriate response to disappointment through redirection in a calm and controlled manner (without using profanity, disrespecting teaching staff or engaging in limit testing), and with a behavior goal that, and after engaging in inappropriate behavior, Student would accepting the consequences of his behavior without angry outbursts. Parent agreed with these goals.

43. The IEP team reviewed and adopted a proposed behavior support plan for Student, to be implemented by Student's teacher, classroom aide, and special education counselor, to address Student's use of inappropriate language towards peers and staff whenever he had received an incentive or something he wanted, or when told "No." This behavior impeded Student's learning and that of others because he and his teacher would both have to take time from classwork to address Student's behaviors. Student's need for a

behavior support plan was described as moderate, rather than serious or extreme. To address Student's behavior, Student's teacher was to make sure daily that Student had clear expectations when he returned from an out-of-class incentive such as the school store, helping in the school's brain lab, or extra computer time. He would be taught to ask to talk to a trusted adult before getting upset and using inappropriate language, and this good behavior would be reinforced with incentives of extra computer time, classroom dollars, and use of the school store.

44. The team also discussed and agreed to classroom accommodations, strategies, and curriculum modifications for Student. As accommodations, Student was to be provided reduced assignments, note taking support, highlighted textbooks and study notes, use of a calculator for math and science, and access to a computer. In test situations, Student's teacher was to provide flexible seating and read tests aloud, and, for the California Modified Assessment test, answer options were to be read aloud. To support his organization and behavior, in addition to his behavior support plan, Student was to receive preferential seating near the teacher, short breaks between assignments, reminders of his behavior goals and positive rewards, and choices where possible. To support his instruction, Student's teacher was to present one task or direction at a time, repeat and rephrase instructions, check for Student's understanding, provide Student access to a separate study area, and work on Student's functional math skills when appropriate. Student was to be taught a modified math curriculum, but otherwise California's essential standards were to be the basis of Student's instruction

45. The IEP team discussed Student's placement options. The team agreed that Student required specialized academic instruction for all of his school day, and agreed that placement in a non-public school was appropriate. The team discussed whether Student needed to be placed in a residential facility either for educational or family reasons. Parent and advocate noted that Student had lived at McKinley Children's Center for a long time and felt Student was not ready to move home. Parent stated that he and Student's brothers were still suffering from post-traumatic stress disorder resulting from Student's previous return home. McKinley staff told the team that Student had been able to maintain behavior levels of "A" and "B", with "A" being the highest and "C" being considered the level of behavior at which it was appropriate for a student to live in the community, rather than in residential placement. An example of Student's improved behavior was that he had had moved from physical aggression to verbal defiance. Student's residential cottage manager, Ms. Mora, stated that Student had not engaged in any dangerous or severely unsafe behaviors since she had known him and she was not comfortable recommending a residential placement for Student. At hearing, Ms. Ols, who had known Student since 2007, opined that Student did not need residential placement in order to function in school, but would need support, not educationally related, in order to transition to life at home. At the IEP, Parent and advocate expressed concern about Student moving home without services to aid in the transition.

46. After discussion, District's FAPE offer to Student was full-time specialized academic instruction in a small-classroom environment at Five Acres non-public day school, with extended school year, and designated instructional services of: home-to-school

transportation and 60 minutes per week of individual counseling for Student, including the extended school year, at Five Acres. In addition, for the four-month period from March 1, 2013 to June 28, 2013, Student was to receive transition services of 60 minutes per week of transition counseling for Parent to be provided at Five Acres; 300 minutes per week of in-home behavior intervention services; and 60 minutes per week of social work services at Five Acres from March 1, 2013 through June 28, 2013.

Parent's Response to the March 1, 2013 IEP and District's Assessment

47. On April 5, 2013, District sent Student's advocate an amended report incorporating some of the changes that Parent had requested at the IEP. Student's advocate acknowledging receipt of the District's revised report, and indicated that Student would review it to see if Student would be disagreeing with District's assessment as well as to the IEP.

48. On April 25, 2013, Parent sent District a letter transmitting a signature page for the March 1, 2013 IEP and an amendment page for the IEP containing Parent's comments and concerns. On the signature page, Parent agreed to a non-public school placement, designated instructional services, and implementation of the IEP's goals. In his comments and concerns, Parent disagreed with District's offer of day-school placement, reiterating his belief that Student required a residential placement. Parent agreed that Student met the criteria for other health impairment eligibility for special education, but stated that he believed that Student also met the criteria for eligibility under the category of emotional disturbance. Parent objected to language in the District's assessment report that Parent felt did not adequately describe the involvement of Student's family in Student's educational program and therapeutic support, but Parent did not object to the assessment on other grounds, and did not request that District fund an independent educational evaluation of Student.

49. On May 25, 2013, Parent advised District of his intent to residentially place Student at Forest Heights Lodge, and requested reimbursement from District. On June 3, 2013, Parent unilaterally placed Student at Forest Heights Lodge. District responded on June 6, 2013 and denied Parent's request for reimbursement. Student made good academic and behavioral progress at Forest Heights Lodge, and remained in residential placement there as of the hearing in this matter.

August 2013 Assessment by Dr. McRoberts

50. In August 2013, Student was privately assessed at Forest Heights by Dr. Chris McRoberts, Ph.D. Dr. McRoberts prepared a Report of Psychological Evaluation dated September 20, 2013. Student provided District a copy of Dr. McRoberts' report after filing the complaint in this matter.

51. Dr. McRoberts is a clinical psychologist licensed in Utah. In the last five years, Dr. McRoberts has conducted 120 to 150 psychological assessments of students for treatment and academic purposes, and he has participated in approximately 150 IEPs.

52. The purpose of Dr. McRobert's evaluation was to clarify Student's then-existing personality dynamics, mental health issues, and cognitive/intellectual functioning in order to provide Parent and Forest Heights recommendations for ongoing treatment and academic planning as well as for aftercare planning. Dr. McRoberts did not attempt to assess Student's psychoeducational condition at the time of District's March 1, 2013 IEP, and therefore he did not interview any of Student's former teachers and counselors at McKinley and Canyon View to obtain information from them about Student's condition at the time of District's assessment.

53. For his report, Dr. McRoberts reviewed Student's medical records, observed Student in the classroom, and conducted a mental health status examination of Student. Dr. McRoberts also included information from interviews of Parent and Student's therapist at Forest Heights. Dr. McRoberts did not interview Student's teachers or counselors from McKinley and Cottager View.

54. Dr. McRoberts administered the Wechsler Intelligence Scale for Children - Fourth Edition, the Woodcock-Johnson III, the Rey Complex Figure Test, and the Delis-Kaplan Executive Function System to measure Student's cognitive abilities. To measure Student's personality dynamics and the possibility of mental illness, Dr. McRoberts administered the Adolescent Psychopathology Scale, the Millon Adolescent Clinical Inventory, the Rorschach Inkblot Test, the Sentence Completion Test, and the Substance Abuse Subtle Screening Inventory for Adolescents - Second Edition.

55. During testing and interviews with Dr. McRoberts, Student was pleasant and cooperative. Student indicated a clear hope to go home in a short time and was highly motivated to perform well on the tests administered by Dr. McRoberts, making it likely that his cognitive test scores were accurate reflections of his abilities. Student exhibited symptoms of ADHD including fidgeting, an inability to sit still, a need to get up and move around the room, interrupting the examiner, and requiring that the examiner repeat instructions. Dr. McRoberts saw no evidence in his examination that Student had experienced psychotic, dissociative or obsessive-compulsive behaviors, and no clear evidence of bipolar symptoms.

56. The information provided by Parent during his interview with Dr. McRoberts did not differ materially from what parent told Ms. Schiern when he was interviewed for the District's assessment. Student's therapist at Forest Heights, Brian Helf, reported similar observations of Student as those reflected in Student's present levels of performance in District's March 1, 2013 IEP. Mr. Helf explained Student could quickly become angry or sullen, but not violent, did not take responsibility for his actions, and avoided discussing his personal problems. He said that Student was upset by change, had trouble reading people, and could put others off by being controlling and defensive.

57. Student's results on the Wechsler Intelligence Scale were similar to those he obtained on the test in 2010. The Wechsler resulted in separate estimates for verbal comprehension abilities, perceptual reasoning abilities, working memory abilities, processing

speed abilities, and a composite of the four scores referred to as “full scale IQ.” Student’s scaled and percentile scores were 93 in verbal comprehension (32nd percentile), 92 in perceptual reasoning (30th percentile), 77 in working memory abilities (sixth percentile), 80 in processing speed abilities (ninth percentile) and 83 full scale IQ (13th percentile). Noting that Student’s working memory score, which evaluated Student’s attention, concentration and mental control, was well below what would be expected based on his verbal comprehension and perceptual reasoning scores score, Dr. McRoberts opined that this relative weakness was typical of students with ADHD, who have difficulty holding on to information in their short-term memory while using the information on a task. Student’s similarly low comparative score in processing speed, which measured the rapidity with which Student could mentally process simple visual material without making errors, was, in Dr. McRoberts’ opinion, also indicative of ADHD, as well as a non-verbal learning disability– a significant discrepancy between Student’s ability to process and understand language and his ability to process and understand visual information.

58. Student’s results on the Woodcock-Johnson academic assessment were somewhat higher than those obtained by District. Student’s overall academic skills equated to grade level 5.0. His broad reading standard score equated to grade level 5.2, and broad math standard score equated to grade level 3.9, or the third percentile among his peers. Student’s math score was substantially below the level expected based on his age, grade placement, and verbal comprehension score from the Wechsler Intelligence Scale.

59. The Rey Complex Figure Test measured Student’s visual-spatial processing skills by asking him to copy a complex line drawing of a figure that looked like a house tipped on its side with many shapes and details within, first while looking at the drawing, and then from memory immediately, and after a 15-minute delay. Unlike most people who outline the house and then fill in details, Student attempted in both instances to draw the figure by copying first one detail, then another, and so on. Student’s copy did not resemble the overall design of the figure, the details were misplaced, and the drawing was impulsively done, with wavy lines overshooting their intended end points. The accuracy of Student’s copy of the design while looking at it fell at the 6th percentile of others his age, and his ability to copy the design from immediate and 15-minute memory was at the second percentile. The inaccuracy and impulsivity of Student’s drawing was typical for students with non-verbal learning disability and ADHD.

60. To further evaluate Student for ADHD, Dr. McRoberts administered the Delis-Kaplan Executive Function System, which used four subtests to evaluate aspects of Student’s higher-level executive functioning such as his ability to plan, process verbal and visual information, organize and remember information, be flexible in his thinking, motor speed, and ability to inhibit overlearned responses. Each subtest asked Student to perform increasingly complex tasks, and to switch between two types of thinking. For example, the trail making test asked Student to draw lines to cross out or connect circles that contained letters and/or numbers, first simply crossing out all circles with the number three, then connecting circles in numerical order while ignoring those containing letters, then connecting circles that contained both numbers and letters in alphabetical order, and finally connecting

circles by switching from the circle with the lowest number to that with the lowest letter (for example, connecting “1” to “A” to “2” to “B,” and so on. In these tests, Student generally performed consistently with his cognitive ability on the simpler tests, but much worse on the more complex tests that required him to quickly switch between one type of thinking to another, as when Student had to switch between arranging objects in numerical and alphabetical order. Student’s scores on more complex tasks fell within the low average to impaired range, except with respect to his verbal fluency at switching between categories of words, which was average. These scores were again indicative of a non-verbal learning disability and ADHD.

61. For the Adolescent Psychopathology Scale, Student responded to approximately 400 questions about himself, and his responses were then compared to those of a normative sample group of adolescents to evaluate standard mental health problems such as depression, anxiety and oppositionality. Although this assessment is a standardized test scored against a representative sample, Dr. McRoberts did not refer to comparative scores, but reported the results in more general terms, stating, for example, that the results indicated that Student had tendencies towards opposing authority, rigidity, independent mindedness, and alienation from himself and others. Student also had depressive symptoms of a lack of energy and a high degree of apathy, arising from feeling misunderstood, lonely, unhappy and estranged from others, and from feeling guilty, regretful and remorseful about failures in his life.

62. Dr. McRoberts used the Millon Adolescent Clinical Inventory, which was a self-survey, to assess Student for long-term underlying maladaptive personality traits such as narcissism, excessive dependency, avoidance of other people, or borderline personality disorder. Again, Dr. McRoberts did not refer to comparative test scores. He reported that Student’s responses indicated that he did not have any ingrained and problematic personality characteristics which would lead to problems across life domains and adaptation, suggesting that Student’s previous behavioral and emotional problems were more related to his learning and cognitive style rather than any deep-seated emotional problems. Student’s responses also indicated that he “had a propensity toward anxiety,” based on his acknowledgment of a sense of foreboding and apprehensiveness about all sorts of matters making him fretful and nervous. At hearing, Dr. McRoberts described this as an “elevated score” for chronic anxiety, which score he did not specify or further explain.

63. Student’s responses to the Rorschach inkblot test indicated that he did not suffer from serious depression, high levels of anxiety, obsessiveness, or psychosis. It did suggest problems with coping skills, processing and social relations common among students with non-verbal learning disability and ADHD. Student’s responses on the Sentence Completion Test when asked to complete sentences such as “I wish I could . . .” indicated that Student tended to use fantasy as a way to cope with issues, desired positive relationships with others, and was independent and oppositional. The Substance Abuse Subtle Screening Inventory for Adolescents indicated that Student was not at risk for substance abuse or addictive behavior.

64. Based on his review of Student's medical records, his interviews of Parent and Student's therapist, and his examination and testing of Student, Dr. McRoberts believed that District's assessment and IEP were fatally defective and denied Student a FAPE on two principal grounds: first, that District failed to identify and address Student's non-verbal learning disability; and second, that District failed to identify and address Student's unspecified anxiety disorder. Dr. McRoberts agreed with District that Student was eligible for special education under the category of other health impairment, but based that eligibility on a medical diagnosis of neurodevelopmental disorder in the form of a non-verbal learning disability, rather than on Student's existing diagnosis of mood disorder, not otherwise specified. Dr. McRoberts also diagnosed Student with ADHD, with dysthymic disorder (a mild form of depression), and with a mathematics disorder because Student's tested mathematical ability was substantially below the level expected based on his age, grade placement, and verbal comprehension score on the intelligence test. These medical diagnoses are persuasive because they were supported by observation and results of multiple tests conducted by Dr. McRoberts, by Student's long history of ADHD, by the testimony of Dr. Schiern, who agreed that Student might have a non-verbal learning disability and ADHD, and by observations of McKinley/Canyon View staff such as Ms. Powell who told Ms. Schiern that Student exhibited "a lot of guilt and sadness."

65. Dr. McRoberts report also diagnosed Student with unspecified anxiety disorder with symptoms exhibited in situations where Student felt overwhelmed by complexity, change or social relationships he was not equipped to manage. Dr. McRoberts believed that Student acted out in response to being overwhelmed by the combined effects of his anxiety disorder, nonverbal learning disability, and ADHD. This diagnosis was not persuasive because the basis for this conclusion was not stated, Student's responses to the Rorschach inkblot test indicated that he did not suffer from high levels of anxiety, and the Millon Adolescent Clinical Inventory test results suggested only a propensity towards anxiety, or, as Dr. McRoberts opined at hearing, an unspecified elevated score for chronic anxiety.

66. Dr. McRoberts report did not clearly explain how his medical diagnoses would relate to eligibility categories under the IDEA and Education Code. The report stated that Student met the criteria for the eligibility categories of learning disability and emotional disturbance because he was unable to effectively interact with peers, to achieve academically at his expected level, or to maintain behavioral and emotional stability in a normalized environment. Dr. McRoberts found Student to be unable to maintain positive adaptation or emotional or behavioral control under any sort of normal circumstance. The report's conclusions on these points were not based on the IDEA and Education Code criteria for eligibility for special education under the categories of specific learning disability¹ or

¹ A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1401(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).) A specific learning disability may be determined using one of two methods: the severe

emotional disturbance. To be eligible for special education under the category of emotional disturbance, a student must exhibit, over a long period of time, and to a marked degree that adversely affects his or her educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems; or schizophrenia. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4)(A-F).) At hearing, Dr. McRoberts did not address IDEA and Education Code criteria for eligibility for special education under the categories of specific learning disability. Dr. McRoberts in his testimony did review IDEA and Education Code criteria for emotional disturbance, and he conjectured that Student exhibited an inability to learn, not explained by his intellectual abilities, that affected his educational performance as a result of “tremendous anxiety” that impacted him all the time in the classroom because, in conjunction with his health factor of ADHD, it interfered with his attention to his work. However, the “tremendous anxiety” on which Dr. McRoberts based his finding of emotional disturbance was not evident from Student’s test results, which found that Student did not suffer from high levels of anxiety, but at most a propensity towards anxiety, or an unspecified elevated score for chronic anxiety. Dr. McRoberts offered no reasons why Student’s ADHD alone did not explain his attention difficulties. Dr. McRoberts’ also testified that Student demonstrated some inability to maintain interpersonal relationships and a tendency to develop physical symptoms and fears displayed as anxiety as a result of personal or school problems. Dr. McRoberts’ testimony on these points was anecdotal based on his limited personal observations of Student, such as his observation that Student other students were reluctant to play a game with Student that involved blocking his basketball shots with their basketballs, and his observation that Student complained of foot pain to avoid working on his wood shop project. Dr. McRoberts’ observations were corroborated to some degree by testimony of Ms. Ols, who noted that Student sometimes fought with others and sometimes complained of physical symptoms, and testimony by Mr. Grimm, who recalled that Student would become anxious anticipating upcoming visits by his family. However, the test results and testimony presented did not support a conclusion that Student displayed these issues over a long period of time, and to a marked degree that adversely affected his educational performance.

discrepancy method, or the response to intervention method. (20 U.S.C. § 1414(b)(6); 34 C.F.R. §§ 300.307, 300.309(a)(1) & (2); Ed Code, § 56337, subds. (b) and (c).) A severe discrepancy is demonstrated when: (i) a comparison of standardized achievement and ability test scores shows that they are more than 1.5 standard deviations apart, adjusted by one standard error of measurement to a maximum of four standard score points; and (ii) the discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) 1.) The response to intervention method of SLD eligibility determines if a student responds to scientific, research-based intervention as a part of the assessment procedures described in Section 1414(b)(2) and (3) of Title 20 of the United States Code and covered in Sections 300.307 to 300.311, inclusive, of Title 34 of the Code of Federal Regulations. (Ed Code, § 56337, subd. (c); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C).)

67. At hearing, Dr. McRoberts testified that, to address Student's non-verbal learning disability, Student required a classroom environment that included a small class, one-on-one teacher attention, non-timed assignments, few transitions, warnings regarding upcoming transitions, and multi-modal teaching strategies that provided information in verbal as well as visual bases. Dr. McRoberts' recommendations for Student closely track District's IEP offer, which included full-time specialized academic instruction in a small-classroom environment at Five Acres, preferential seating near the teacher, reduced assignments,, short breaks between assignments, presentation of one task or direction at a time, repetition and rephrasing of instructions, frequent checks for Student's understanding, note taking support, highlighted textbooks and study notes, use of a calculator for math and science, access to a computer flexible seating on tests to be read tests aloud, reminders of his behavior goals and positive rewards, and choices where possible. Dr. McRoberts' report and testimony did not conclude that Student could not obtain educational benefit at District's proposed placement Five Acres, nor did it identify any aspect of Student's emotional or behavioral profile that could not be sufficiently addressed at Five Acres to enable Student to access and benefit from his education. Dr. McRoberts visited District's proposed placement, Five Acres, and was "quite impressed." He believed Five Acres offered a good program for students who are aggressive, angry or act out at school, and that it enabled students to sit in class and get their work done. Dr. McRoberts believed that Student's transition in 2011 to the home environment from Five Acres residential program had not been successful because Five Acres had managed Students behavior very well at Five Acres, but had not taught him to manage his anxiety to avoid becoming overwhelmed in the unstructured environment of the real world.

68. To address Student's anxiety and other emotional issues (mild depression, difficulty with interpersonal relationships, and a tendency to develop physical symptoms as a result of personal or school problems), Dr. McRoberts' report concluded that Student would "likely benefit most" from placement in a clinically-based residential treatment center. Dr. Roberts believed that Student required a residential therapeutic milieu, and group therapy, even though his behavior could successfully be controlled at school during the day, because simply controlling Student's behavior at school without teaching him to address his anxiety would cause his anxiety to rise until he blew up at home.

69. At hearing, Dr. Roberts acknowledged that it was not District's responsibility to help Student do better at home. Dr. McRoberts did not identify any unique needs arising from a neurodevelopmental disorder, ADHD, dysthymic disorder, mathematics disorder, or unspecified anxiety disorder that needed to be addressed to enable Student to access and benefit from his education, but was not addressed in District's offer of FAPE.

Five Acres' Ability to Implement Student's March 1, 2013 IEP

70. From March 2009 to June 2011, Five Acres successfully implemented Student's IEP's, and Student made both academic and behavioral progress at school. At hearing, Five Acres Assistant Director Gregory Constant testified concerning Student's history at Five Acres and about Five Acres' ability to implement the terms of District's

March 1, 2013 IEP. Mr. Constant recalled Student as a friendly, engaged, and athletic student who did well and improved behaviorally and academically. While at Five Acres, Student was verbally aggressive, but responded well to verbal redirection. Although the transition supports that Five Acres provided when Student lived at home from January to May, 2011 did not prevent the escalation of Student's aggressive behaviors at home, Student showed no increase in negative behaviors at Five Acres, and maintained his grades as As and Bs.

71. Mr. Constant explained that Five Acres offered a therapeutic approach to its students, providing school-based individual counseling, specialized academic instruction, behavior intervention services, and social work services thorough another outside agency. Mr. Constant reviewed District's March 1, 2013 IEP and confirmed that Five Acres was experienced in implementing, and could successfully implement, the specialized academic instruction, student and parent counseling and social work services, and behavior intervention services offered in the IEP. He also confirmed Five Acres' ability to implement Student's behavior support plan, and to support Student's progress on his specified goals. Especially in light of Student's prior success when he was in the Five Acres program and Parent's own satisfaction with Five Acres as a placement for Student prior to finding Forest Lodge, Mr. Constant's testimony on these points was persuasive.

LEGAL CONCLUSIONS

Introduction – Legal Framework Under the IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and the California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)³ et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code,

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

§ 56031.) “Related services” (also called “designated instruction and services” in California) are transportation and other developmental, corrective, and supportive services that are required to assist a child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a)) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (“*Rowley*”), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

Issue: Did District Deny Student a FAPE by Not Offering Student a Residential Placement?

5. Student contends that District denied Student a FAPE in its March 1, 2013 IEP offer, because Student required placement at a residential treatment facility to obtain an educational benefit in light of his social, emotional and behavioral issues. District contends that Student could have obtained an educational benefit by attending Five Acres non-public day school as offered to Student in the March 1, 2013 IEP, and that Student did not require the more restrictive residential placement preferred by Parent.

DISTRICT'S IEP WAS PROPERLY DEVELOPED

6. To determine whether a school district offered a student a FAPE the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

7. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams*, 195 F.3d at p.1149.)

8. The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467 ("San Diego").) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

9. A child's placement and related services are determined by his or her unique needs, not the eligibility category assigned to the child. (See, e.g., 20 U.S.C. § 1412(a)(3)(B) [Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability . . . is regarded as a child with a disability under this subchapter]; *Heather S. v. Wisconsin* (7th Cir. 1995) 125 F.3d 1045, 1055 ["The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education . . . tailored to the unique needs of that particular child."].)

10. To identify a child's unique needs, a district must ensure that a child is assessed "in all areas related to" a suspected disability. (Ed. Code, § 56320, subds. (c) & (f).) Tests must be selected and administered to produce results "that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure ... " (Ed. Code, § 56320, subd. (d).) The child's IEP is tailored to the child's unique needs in order to provide a FAPE. (*Rowley*, supra, 458 U.S. 176, 181.) In any particular case, the student's IEP defines the goals that are relevant in providing the measure of whether a student is getting an educational benefit in the placement. (*San Diego*, supra, 93 F.3d 1458, 1467.)

11. Except for a five-month period in 2011, Student, age 14, had lived continuously in residential treatment centers since he was seven. He was placed in residential treatment because of violent and threatening behaviors at home in 2007, and returned to residential treatment in 2011 after a brief time living with his family because of violent and threatening behaviors at home. Throughout the last seven years, Student's residential placements have been made, and funded by, Parent and the Department of Children and Family Services because of concerns over his behavior at home, and not by Student's IEP teams for educational reasons.

12. During the same period, although Student has exhibited classroom learning difficulties and behavioral issues making him eligible for special education, these classroom learning difficulties and behavioral issues have never been found to be of a nature or severity that could not be addressed by specialized academic instruction and designated instructional services. As a result, no IEP team has ever concluded that Student required residential placement in order to receive a FAPE.

13. When funding for Student's residential placement from the Department of Children and Family Services ran out in December 2012, Parent sought a comprehensive evaluation of Student to determine whether Student might require continued residential placement in order to address disabilities affecting his academic progress, school behavior, and socialization. District responded by conducting a comprehensive set of assessments of Student based on an assessment plan, which was negotiated with Parent and Parent's attorney, and incorporated all tests requested by Parent.

14. District, in February 2013, assessed Student's cognitive ability, his academic achievement, social and emotional development, motor ability, health and development, and eligibility for educationally-related health services. The assessment recommended that Student continue to be eligible for special education, and that he be placed in a non-residential program offering a small-group learning environment with individualized academic support; continued use of a structured behavior support plan in the classroom; use of "priming" of material to be learned and pre-teaching concepts using familiar contexts; repetition of material; extended time to complete tasks; and material broken into smaller chunks. At the time, Parent did not object to District's assessment generally, or with specific issues such as not obtaining a teacher rating scale for the Conners 3 assessment for ADHD or a custodial caregiver assessment on Behavior Assessment System for Children 2. Parent did

not seek an independent assessment at public expense⁴, and did not provide the IEP team with any information that would demonstrate District's conclusions about Student's unique needs were inaccurate.

15. Based on the assessment, District found Student eligible for special education under the category of other health impairment, and prepared an IEP that contained specific academic, behavioral, social emotional, and vocational goals for Student, supported by: full-time specialized academic instruction in a small-classroom environment at Five Acres; Student and Parent counseling; transition supports for Student's return to life at home; appropriate accommodations and modifications; and a behavior support plan. District's IEP offer provided substantially the same classroom environment and supports that Student's expert, Dr. McRoberts, recommended; that is, a small class size with one-on-one teacher attention, extra time on assignments, few transitions, warnings regarding upcoming transitions, and multi-modal teaching strategies that provided information in verbal as well as visual bases.

16. Following the IEP, Parent agreed to Student's eligibility for special education under the category of other health impairment, District's offer of non-public school placement and designated instructional services, and implementation of the IEP's goals. Parent disagreed only with District's determinations that Student did not require residential placement, and was not also eligible for special education under the category of emotional disturbance.

17. Student, through Student's expert, Dr. McRoberts, objected to District's IEP on grounds it was based on an inaccurate medical diagnosis of Student, and therefore failed to address Student's primary issues of nonverbal learning disability and unspecified anxiety disorder. However, District's offer of placement and services included substantially the same placement, accommodations, modifications and teaching methods as Dr. McRoberts had recommended to address Student's non-verbal learning disability, and Student did not explain any aspect of Student's non-verbal learning disability that District's offer failed to address. Dr. McRoberts medical diagnosis of unspecified anxiety disorder was not supported by his testing of Student and was not persuasive. Even if that diagnosis were correct, Dr. McRoberts did not explain how that medical diagnoses, or a failure to teach Student ways to address his anxiety and emotional needs to prevent behavioral incidents at home, would prevent Student from obtaining the educational benefit encompassed in Student's IEP goals in a community day school setting like Five Acres. Similarly, Dr. McRoberts did not identify any unique needs arising from Student's ADHD, dysthymic disorder or mathematics disorder that needed to be addressed to enable Student to access and benefit from his

⁴ A student may be entitled to an independent educational evaluation (IEE) at public expense if he or she disagrees with an evaluation obtained by the public agency and requests an IEE. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1)(2006)⁴; Ed. Code, § 56329, subd. (b).)

education, but was not addressed in District's offer of FAPE. Also, Dr. McRoberts' assessment of Student was conducted six months after District's assessment, in Student's new environment at Forest Heights, and for the purpose of advising Forest Heights in the development of a treatment plan for Student. Dr. McRoberts did not attempt to assess Student's psychoeducational condition at the time of District's March 1, 2013 IEP, and therefore he did not interview any of Student's former teachers and counselors at McKinley and Canyon View to obtain information from them about Student's condition at the time of District's assessment. For these reasons, Dr. McRoberts' report, testimony and conclusions made in hindsight concerning Student's condition at the time of District's IEP cannot be given as much weight as District's assessment conducted at the time of the IEP.

18. Student also contended that he was denied a FAPE because he should have been found eligible for special education under the categories of emotional disturbance and specific learning disability in addition to the category other health impairment. These contentions were not supported by a preponderance of the evidence. Even if those additional eligibilities had existed, Dr. McRoberts identified no additional designated instructional services, accommodations, or modifications beyond those offered by District that would be required to address Student's unique needs. While District's offer did not include a residential therapeutic milieu, and group therapy to address Student's anxiety and emotional issues, Dr. McRoberts recommended these additional therapies to enable Student to succeed in his home environment, not in school. Dr. Roberts acknowledged that it was not District's responsibility to help Student do better at home. Also, even if Dr. McRoberts was correct that Student would "likely benefit most" from placement in a clinically-based residential treatment center, the focus must be on the adequacy of the District's proposed program, rather than whether Parents' preferred program would have resulted in greater educational benefit. (*Gregory K. v. Longview School Dist.*, *supra*, 811 F.2d 1307, 1314.)

19. Based on the evidence presented, District conducted an appropriate assessment of Student to identify Student's unique needs, and developed an IEP with goals agreed-upon by Parent, specialized academic instruction and counseling services, accommodations, modifications, a behavior support plan reasonably calculated to address Student's unique needs, and to allow Student to progress on his goals and obtain an educational benefit. The objections of Student's expert to the IEP based on different medical diagnoses and a need for therapy to teach Student to handle anxiety and emotional issues in his home environment, did not establish that Student's IEP goals, services, accommodations, modifications and behavior support plan were not appropriate.

PLACEMENT MUST BE IN THE LEAST RESTRICTIVE ENVIRONMENT

20. A school district must deliver each child's FAPE in the least restrictive educational environment (LRE) appropriate to the needs of the child. (20 U.S.C. § 1412(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of

supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

21. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) “the educational benefits of placement full-time in a regular class”; 2) “the non-academic benefits of such placement”; 3) “the effect [the student] had on the teacher and children in the regular class”; and 4) “the costs of mainstreaming [the student].” (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the LRE for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette’s syndrome].) Whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is an individualized, fact-specific inquiry. (*Daniel R.R. v. State Bd. of Educ.*, *supra*, 874 F.2d at p. 1048.) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Id.* at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

22. Residential placement is, by its nature, considerably more restrictive than day school. (See *Kerkam by Kerkam v. Superintendent, D.C. Pub. Sch.* (D.C. Cir. 1991) 931 F.2d 84, 87; *G.D. v. Westmoreland School Dist* 948 (1st Cir.1991) 930 F.2d 942, 948; *Carlisle Area Sch. v. Scott P. By & Through Bess P.* (3d Cir. 1995) 62 F.3d 520, 534.) The IDEA does not define a therapeutic placement; however, both day schools and residential facilities can qualify as therapeutic placements. By their very nature, therapeutic placements require a student’s removal from the general education environment. As a result, a therapeutic placement is one of the most restrictive placements on the LRE continuum. (34 C.F.R. § 300.115.) Given their restrictive nature, removal of a student with disabilities to a residential setting complies with the LRE mandate in only extremely limited situations for students with severe disabilities who are unable to receive a FAPE in a less restrictive environment. (*Carlisle Area Sch. Dist. v. Scott P.*, *supra*, 62 F.3d at p. 523.)

23. Here, District and Parent agreed that Student could not be appropriately educated in the general education environment, and required full-time specialized academic instruction in a non-public school. District’s determination that a non-public day school was the least restrictive environment appropriate for Student was well supported. In the nearly six years between June 2007, when Student was found eligible for special education, and District’s March 2013 IEP, Student’s in-class behavioral and emotional issues consistently

were of a nature and severity that could be addressed in day school. Additionally, the behaviors that Student exhibited in the classroom did not follow, or precede, more severe behaviors after school, and did not seem to trigger, or be triggered, by them. Every IEP team from the three districts responsible for providing a FAPE to Student over that time concluded at each IEP that day school rather than a more restrictive residential treatment center was the appropriate, least restrictive environment in which Student could achieve his IEP goals and obtain an educational benefit.

24. In this instance, Five Acres Assistant Director Gregory Constant testified persuasively that Five Acres day school could deliver a FAPE to Student. Five Acres was experienced in implementing, and could successfully implement, the specialized academic instruction, student and parent counseling, social work services, and behavior intervention services offered in District's March 1, 2013 IEP. Mr. Constant also confirmed the ability of Five Acres to implement Student's behavior support plan, and to support Student's progress on his specified goals.

25. In sum, because Five Acres could meet Student's needs, and was located in Student's home city, such that Student could live at home, it was the least restrictive environment compared to an out-of-state residential placement. Student did not establish by a preponderance of the evidence that placement at Five Acres day school was not the least restrictive environment in which District could deliver a FAPE to Student.

DISTRICT NOT REQUIRED TO PROVIDE RESIDENTIAL PLACEMENT FOR NON-EDUCATIONAL NEEDS

26. The finding that a non-public day school was the least restrictive environment in which District could deliver a FAPE to Student does not negate Parent's genuine concern that Student's negative behaviors might escalate following a transition from the structured environment of a residential treatment center to the less structured environment family home. This was the result following Student's transition home in January 2011, and the record also indicates that Student's aggressive behaviors at McKinley/Canyon View were significantly more pronounced in the residential cottages than in the classroom. However, the law is clear – and Student's expert Dr. McRoberts agreed – that it was not District's responsibility to help Student do better at home.

27. A district's responsibility under the IDEA is to remedy the learning-related symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest Grove School District v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement for student's drug abuse and behavior problems].) An analysis of whether a residential placement is required must focus on whether the placement was necessary to meet the child's educational needs. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, 643 (Clovis).) If "the placement is a response to medical, social, or emotional problems ... quite apart from the learning process," then it

cannot be considered necessary under the IDEA. (*Ibid.*, accord *Ashland School Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1009.)

28. *Kerkam by Kerkam v. Superintendent, D.C. Pub. Sch.* (D.C. Cir. 1991) 931 F.2d 84), presents an appropriate analysis on facts similar to those presented here. Parents rejected a day-class placement offer for their cognitively-impaired son and unilaterally placed him in a residential treatment center because having him live at home “had proved unworkable.” (*Id.* at p. 87.) The court agreed that the parents’ chosen residential placement was superior to the day class offered by the district. (*Ibid.*) Acknowledging the “understandable concern for [the student’s] best interests rather than on the appropriateness of the educational program proposed by the [district],” the court concluded that, because the evidence supported the conclusion that the District’s day class placement would confer some educational benefit, the district’s placement was an appropriate placement in the least restrictive environment and the district was not required to reimburse parents for the residential placement: “[N]o decisionmaker can casually deny a child and his overburdened parents resources they can so well use. . . . ; The command of Congress, however, is not difficult to discern. Congress has decided that every handicapped child should receive an appropriate education at public expense. The District of Columbia has met that standard. The Kerkams have laudably provided their child with a program intended to maximize his progress, but the Act does not require the District to reimburse them.” (*Id.* at p. 88.)

29. The evidence presented in this matter showed that the non-public day-school program offered by the District offered Student a FAPE, and Student did not make the showing required under the IDEA and Education Code necessary to justify Student’s placement, for educational purposes, in the substantially more restrictive environment of a residential treatment center.

ORDER

All of Student’s claims for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: August 4, 2014

_____/s/
ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings